

Conference Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 292

# HOUSE BILL 2386

AN ACT

AMENDING SECTIONS 20-2102, 20-2109 AND 20-2110, ARIZONA REVISED STATUTES;  
RELATING TO INSURANCE INFORMATION AND PRIVACY PROTECTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-2102, Arizona Revised Statutes, is amended to  
3 read:

4 20-2102. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Adverse underwriting decision" means any of the following actions  
7 involving insurance coverage which is individually underwritten:

8 (a) A declination of insurance coverage.

9 (b) A termination of insurance coverage.

10 (c) Failure of an agent to apply for insurance coverage with a  
11 specific insurance institution which the agent represents and which is  
12 requested by an applicant.

13 (d) In the case of property or casualty insurance coverage, placement  
14 by an insurance institution or agent of a risk with a residual market  
15 mechanism, an unauthorized insurer or an insurance institution which  
16 specializes in substandard risks, or the charging of a higher rate on the  
17 basis of information which differs from that which the applicant or  
18 policyholder furnished.

19 (e) In the case of life, health or disability insurance coverage, an  
20 offer to insure at higher than standard rates.

21 (f) IN THE CASE OF PROPERTY OR CASUALTY INSURANCE, ASSIGNING AN  
22 APPLICANT OR POLICYHOLDER TO A HIGHER RATING TIER OR FAILING TO APPLY A  
23 PREMIUM DISCOUNT OR CREDIT BASED ON ANY CREDIT RELATED INFORMATION DERIVED  
24 FROM THE APPLICANT'S OR POLICYHOLDER'S CONSUMER REPORT, INSURANCE SCORE OR  
25 LACK OF CREDIT HISTORY.

26 Notwithstanding subdivisions (a) through (e) (f) of this paragraph, the  
27 termination of an individual policy form on a class or statewide basis, a  
28 declination of insurance coverage solely because the coverage is not  
29 available on a class or statewide basis or the rescission of a policy is not  
30 considered AN adverse underwriting decisions DECISION, but the insurance  
31 institution or agent responsible for their ITS occurrence shall provide the  
32 applicant or policyholder with the specific reasons for their ITS occurrence.

33 2. "Affiliate" or "affiliated" means a person that directly or  
34 indirectly through one or more intermediaries controls, is controlled by or  
35 is under common control with another person.

36 3. "Agent" means an agent, broker, managing general agent or service  
37 representative as defined in this title.

38 4. "Applicant" means any person who seeks to contract for insurance  
39 coverage other than a person seeking group insurance that is not individually  
40 underwritten.

41 5. "Consumer report" means any written, oral or other communication  
42 of information bearing on a natural person's creditworthiness, credit  
43 standing, credit capacity, character, general reputation, personal  
44 characteristics or mode of living and which is used or expected to be used  
45 in connection with an insurance transaction.

1       6. "Consumer reporting agency" means any person who does any of the  
2 following:

3       (a) Regularly engages, in whole or in part, in the practice of  
4 assembling or preparing consumer reports for a monetary fee.

5       (b) Obtains information primarily from sources other than insurance  
6 institutions.

7       (c) Furnishes consumer reports to other persons.

8       7. "Control", including the terms "controlled by" or "under common  
9 control with", means the possession, direct or indirect, of the power to  
10 direct or cause the direction of the management and policies of a person,  
11 whether through the ownership of voting securities, by contract other than  
12 a commercial contract for goods or nonmanagement services, or otherwise,  
13 unless the power is the result of an official position with or corporate  
14 office held by the person.

15       8. "Declination of insurance coverage" means a denial, in whole or in  
16 part, by an insurance institution or agent of requested insurance coverage.

17       9. "Individual" means any natural person who:

18       (a) In the case of property or casualty insurance, is a past, present  
19 or proposed named insured or certificate holder.

20       (b) In the case of life, health or disability insurance, is a past,  
21 present or proposed principal insured or certificate holder.

22       (c) Is a past, present or proposed policyowner.

23       (d) Is a past or present applicant.

24       (e) Is a past or present claimant.

25       (f) Derived, derives or is proposed to derive insurance coverage under  
26 an insurance policy or certificate subject to this chapter.

27       10. "Institutional source" means any person or governmental entity that  
28 provides information about an individual to an agent, insurance institution  
29 or insurance support organization, other than an agent, the individual who  
30 is the subject of the information or a natural person acting in a personal  
31 capacity rather than in a business or professional capacity.

32       11. "Insurance institution" means any corporation, association,  
33 partnership, reciprocal insurer, inter-insurer, Lloyd's association,  
34 fraternal benefit society or other person engaged in the business of  
35 insurance, including health care service organizations and hospital, medical,  
36 dental and optometric service corporations as defined in this title.  
37 Insurance institution does not include agents or insurance support  
38 organizations.

39       12. "INSURANCE SCORE" MEANS, FOR THE PURPOSE OF INSURANCE UNDERWRITING  
40 OR RATING, A DESIGNATION THAT IS DERIVED BY USING A VARIETY OF DATA SOURCES,  
41 INCLUDING AN INDIVIDUAL'S CONSUMER REPORT IN AN ALGORITHM, COMPUTER PROGRAM,  
42 MODEL OR OTHER PROCESS THAT REDUCES THE DATA TO A NUMBER, ALPHA CHARACTER OR  
43 RATING THAT IS USED FOR INSURANCE UNDERWRITING AND RATING DECISIONS.

44       ~~12.~~ 13. "Insurance support organization" means:

1 (a) Any person who regularly engages, in whole or in part, in the  
2 practice of assembling or collecting information about natural persons for  
3 the primary purpose of providing the information to an insurance institution  
4 or agent for insurance transactions, including the furnishing of consumer  
5 reports or investigative consumer reports to an insurance institution or  
6 agent for use in connection with an insurance transaction or the collection  
7 of personal information from insurance institutions, agents or other  
8 insurance support organizations for the purpose of detecting or preventing  
9 fraud, material misrepresentation or material nondisclosure in connection  
10 with insurance underwriting or insurance claim activity.

11 (b) Notwithstanding subdivision (a) of this paragraph the following  
12 persons are not considered insurance support organizations for purposes of  
13 this chapter:

14 (i) Agents.

15 (ii) Government institutions.

16 (iii) Insurance institutions.

17 (iv) Medical care institutions.

18 (v) Medical professionals.

19 ~~13.~~ 14. "Insurance transaction" means any transaction involving  
20 insurance primarily for personal, family or household needs rather than  
21 business or professional needs and which entails the determination of an  
22 individual's eligibility for an insurance coverage, benefit or payment or the  
23 servicing of an insurance application, policy, contract or certificate.

24 ~~14.~~ 15. "Investigative consumer report" means a consumer report or  
25 portion of a consumer report in which information about a natural person's  
26 character, general reputation, personal characteristics or mode of living is  
27 obtained through personal interviews with the person's neighbors, friends,  
28 associates, acquaintances or others who may have knowledge concerning those  
29 items of information.

30 ~~15.~~ 16. "Medical care institution" means any facility or institution  
31 that is licensed to provide health care services to natural persons  
32 including:

33 (a) Health care service organizations.

34 (b) Home health agencies.

35 (c) Hospitals.

36 (d) Medical clinics.

37 (e) Public health agencies.

38 (f) Rehabilitation agencies.

39 (g) Skilled nursing facilities.

40 ~~16.~~ 17. "Medical professional" means any person licensed or certified  
41 to provide health care services to natural persons, including a chiropractor,  
42 clinical dietitian, clinical psychologist, dentist, nurse, occupational  
43 therapist, optometrist, pharmacist, physical therapist, physician,  
44 podiatrist, psychiatric social worker or speech therapist.

1       ~~17.~~ 18. "Medical record information" means personal information which  
2 relates to an individual's physical or mental condition, medical history or  
3 medical treatment and is obtained from a medical professional or medical care  
4 institution, the individual or the individual's spouse, parent or legal  
5 guardian.

6       ~~18.~~ 19. "Personal information" means any individually identifiable  
7 information gathered in connection with an insurance transaction and from  
8 which judgments can be made about an individual's character, habits,  
9 avocations, finances, occupation, general reputation, credit, health or any  
10 other personal characteristics. Personal information includes an  
11 individual's name and address and medical record information but does not  
12 include privileged information.

13       ~~19.~~ 20. "Policyholder" means any person who:

14       (a) In the case of individual property or casualty insurance, is a  
15 present named insured.

16       (b) In the case of individual life, health or disability insurance,  
17 is a present policyowner.

18       (c) In the case of group insurance which is individually underwritten,  
19 is a present group certificate holder.

20       ~~20.~~ 21. "Pretext interview" means an interview in which a person, in  
21 an attempt to obtain information about a natural person, performs one or more  
22 of the following acts:

23       (a) Pretends to be someone he or she is not.

24       (b) Pretends to represent a person he or she is not in fact  
25 representing.

26       (c) Misrepresents the true purpose of the interview.

27       (d) Refuses to identify himself or herself upon request.

28       ~~21.~~ 22. "Privileged information" means any individually identifiable  
29 information that relates to a claim for insurance benefits or a civil or  
30 criminal proceeding involving an individual and is collected in connection  
31 with or in reasonable anticipation of a claim for insurance benefits or a  
32 civil or criminal proceeding involving an individual, except that information  
33 otherwise meeting the requirements of this paragraph is considered personal  
34 information under this chapter if it is disclosed in violation of section  
35 20-2113.

36       ~~22.~~ 23. "Residual market mechanism" means an agreement for the  
37 equitable apportionment among insurers of insurance afforded applicants who  
38 are in good faith entitled to but who are unable to procure insurance through  
39 ordinary methods.

40       ~~23.~~ 24. "Termination of insurance coverage" or "termination of an  
41 insurance policy" means either a cancellation or nonrenewal of an insurance  
42 policy, in whole or in part, for any reason other than the failure to pay a  
43 premium as required by the policy.

1       24. 25. "Unauthorized insurer" means an insurance institution that has  
2 not been granted a certificate of authority by the director to transact  
3 insurance in this state.

4       Sec. 2. Section 20-2109, Arizona Revised Statutes, is amended to read:  
5       20-2109. Correction, amendment or deletion of recorded personal  
6               information; definition

7       A. Within thirty business days from the date of receipt of a written  
8 request from an individual to correct, amend or delete any recorded personal  
9 information about the individual within its possession, an insurance  
10 institution, agent or insurance support organization shall either:

11       1. Correct, amend or delete the portion of the recorded personal  
12 information in dispute.

13       2. Notify the individual of its refusal to make the correction,  
14 amendment or deletion, the reasons for the refusal and the individual's right  
15 to file a statement as provided in subsection C.

16       B. If the insurance institution, agent or insurance support  
17 organization corrects, amends or deletes recorded personal information, the  
18 insurance institution, agent or insurance support organization shall so  
19 notify the individual in writing and furnish the correction, amendment or  
20 fact of deletion to the following, as applicable:

21       1. Any person specifically designated by the individual who may have,  
22 within the preceding two years, received the recorded personal information.

23       2. Any insurance support organization whose primary source of personal  
24 information is insurance institutions if the insurance support organization  
25 has systematically received the recorded personal information from the  
26 insurance institution within the preceding seven years, except that the  
27 correction, amendment or fact of deletion need not be furnished if the  
28 insurance support organization no longer maintains recorded personal  
29 information about the individual.

30       3. Any insurance support organization that furnished the personal  
31 information that has been corrected, amended or deleted.

32       C. If an individual disagrees with an insurance institution's, agent's  
33 or insurance support organization's refusal to correct, amend or delete  
34 recorded personal information, the individual may file with the insurance  
35 institution, agent or insurance support organization a concise statement  
36 setting forth what the individual thinks is the correct, relevant or fair  
37 information and a concise statement of the reasons why the individual  
38 disagrees with the insurance institution's, agent's or insurance support  
39 organization's refusal to correct, amend or delete recorded personal  
40 information.

41       D. If the individual files either statement as described in subsection  
42 C, the insurance institution, agent or support organization shall:

43       1. File the statement with the disputed personal information and  
44 provide a means by which anyone reviewing the disputed personal information  
45 will be made aware of the individual's statement and have access to it.

1        2. In any subsequent disclosure by the insurance institution, agent  
2 or insurance support organization of the recorded personal information that  
3 is the subject of disagreement, clearly identify the matter in dispute and  
4 provide the individual's statement along with the recorded personal  
5 information being disclosed.

6        3. Furnish the statement to the persons and in the manner prescribed  
7 in subsection B.

8        E. IF THE INDIVIDUAL SO REQUESTS, THE INSURANCE INSTITUTION SHALL  
9 RECONSIDER ITS UNDERWRITING DECISION BASED ON ANY CORRECTED INFORMATION OR  
10 THE INDIVIDUAL'S STATEMENT PROVIDED UNDER SUBSECTIONS C AND D.

11        F. The rights granted to individuals in this section extend to all  
12 natural persons to the extent information about them is collected and  
13 maintained by an insurance institution, agent or insurance support  
14 organization in connection with an insurance transaction. The rights granted  
15 to all natural persons by this subsection SECTION do not extend to  
16 information about them that relates to and is collected in connection with  
17 or in reasonable anticipation of a claim or civil or criminal proceeding  
18 involving them.

19        G. For purposes of this section, "insurance support organization"  
20 does not include a consumer reporting agency.

21        Sec. 3. Section 20-2110, Arizona Revised Statutes, is amended to read:

22        20-2110. Reasons for adverse underwriting decisions

23        A. In the event of an adverse underwriting decision the insurance  
24 institution or agent responsible for the decision shall either provide the  
25 applicant, policyholder or individual proposed for coverage with the specific  
26 reason for the adverse underwriting decision in writing or advise the person,  
27 IN WRITING, that upon written request the person may receive the specific  
28 reason in writing and provide the applicant, policyholder or individual  
29 proposed for coverage with a summary of the rights established under  
30 subsection B of this section and sections 20-2108 and 20-2109.

31        B. Upon receipt of a written request within ninety business days from  
32 the date of the mailing of notice or other communication of an adverse  
33 underwriting decision to an applicant, policyholder or individual proposed  
34 for coverage, the insurance institution or agent shall furnish to the person  
35 within twenty-one business days from the date of receipt of the written  
36 request:

37        1. The specific reason for the adverse underwriting decision, in  
38 writing, if the information was not initially furnished in writing pursuant  
39 to subsection A of this section.

40        2. The specific items of personal and privileged information that  
41 support those reasons except that:

42        (a) The insurance institution or agent is not required to furnish  
43 specific items of privileged information if it has a reasonable suspicion,  
44 based upon specific information available for review by the director, that  
45 the applicant, policyholder or individual proposed for coverage has engaged

1 in criminal activity, fraud, material misrepresentation or material  
2 nondisclosure.

3 (b) Specific items of medical record information supplied by a medical  
4 care institution or medical professional shall be disclosed either directly  
5 to the individual about whom the information relates or to a medical  
6 professional designated by the individual and licensed to provide medical  
7 care with respect to the condition to which the information relates, at the  
8 option of the insurance institution or agent.

9 3. The names and addresses of the institutional sources that supplied  
10 the specific items of information pursuant to paragraph 2 of this subsection,  
11 except that the identity of any medical professional or medical care  
12 institution shall be disclosed either directly to the individual or to the  
13 designated medical professional, whichever the insurance institution or agent  
14 prefers.

15 C. The obligations imposed by this section upon an insurance  
16 institution or agent may be satisfied by another insurance institution or  
17 agent authorized to act on its behalf.

18 D. If an adverse underwriting decision results solely from an oral  
19 request or inquiry, the explanation of THE SPECIFIC reasons and summary of  
20 rights required by subsection A of this section may be given orally.

21 E. IN PROVIDING THE SPECIFIC REASON FOR AN ADVERSE UNDERWRITING  
22 DECISION BASED ON CREDIT RELATED INFORMATION CONTAINED OR NOT CONTAINED IN  
23 AN INDIVIDUAL'S CONSUMER REPORT, THE INSURANCE INSTITUTION OR AGENT SHALL  
24 PROVIDE AT LEAST THE FOLLOWING INFORMATION:

25 1. THAT THE DECISION WAS BASED IN PART ON A CONSUMER REPORT OR THE  
26 ABSENCE OF CREDIT HISTORY.

27 2. THE SOURCE OF THE CONSUMER REPORT AND HOW THE INDIVIDUAL MAY OBTAIN  
28 A COPY OF THE CONSUMER REPORT.

29 3. THE FOLLOWING LIST OF TYPICAL ITEMS RELATIVE TO AN INDIVIDUAL'S  
30 CREDIT HISTORY THAT COULD AFFECT THE CONSUMER REPORT:

31 (a) NUMEROUS REVOLVING ACCOUNTS.

32 (b) NUMEROUS NEW ACCOUNTS.

33 (c) A LARGE REVOLVING CREDIT BALANCE.

34 (d) PAST DUE BALANCES.

35 (e) THE PRESENCE OF COLLECTION ACCOUNTS.

36 (f) A DEROGATORY PUBLIC RECORD.

APPROVED BY THE GOVERNOR MAY 22, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 23, 2002.



Passed the House April 4, 2002,

by the following vote: 53 Ayes,

1 Nays, 6 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate May 2, 2002

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

           day of           , 20  ,

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

          , 20  ,

at            o'clock            M.

            
Governor of Arizona

H.B. 2386

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this            day of           , 20  ,

at            o'clock            M.

            
Secretary of State

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 16, 2002,

by the following vote: 49 Ayes,

6 Nays, 5 Not Voting

[Signature]  
Speaker of the House

Forman L. Forre  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 16, 2002,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]  
President of the Senate

Charmine Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 17 day of May, 2002

at 8:45 o'clock A M.

[Signature]  
Secretary to the Governor

Approved this 22nd day of

May, 2002,

at 4:50 o'clock P M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of May, 2002

at 3:23 o'clock P M.

[Signature]  
Secretary of State

H.B. 2386